Hardial Singh Sekhon v Peguam Negara

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO N-05-77 OF 1996
LAMIN PCA, AHMAD FAIRUZ AND MOKHTAR SIDIN JJCA
4 NOVEMBER 1998

Criminal Procedure *— Jurisdiction of court — Court of Appeal — Applicant prohibited by High Court from instituting any legal proceedings in any court save by leave of judge — Application for leave dismissed — Applicant requested application to set aside order of High Court be heard at appeal — Whether applicant entitled to make application to Court of Appeal to set aside High Court order*

The appellant/applicant had made a complaint to a magistrate asking for the 60 respondents (which included the Minister of Finance and the Attorney-General) to be prosecuted. The magistrate dismissed the complaint. The applicant appealed and also applied for an order for 'suspension and interdict' against the respondents. Both the appeal and the application were dismissed by the Shah Alam High Court. At the same time, the judge made an order that prohibited the applicant from instituting any legal proceedings in any court save by leave of a judge. The applicant later applied in the High Court at Seremban for leave to file a complaint with a magistrate. The High Court at Seremban dismissed the applicant's application. The applicant appealed against the said decision. When the appeal came up for hearing before this court, the applicant requested that he be heard on his notice of motion which sought to set aside the order of the Shah Alam High Court. According to the applicant, that order was a 'nullity order' and as such, the applicant was of the view that he could either ignore the order or go to court and get it set aside.

Held, dismissing the application:

This application should have been made in the High Court at Shah Alam or any High Court in Malaya. The affidavit in support of the applicant's motion did not show that the applicant had made such applications in any of the aforementioned High Courts. There were also no provisions in the Courts of Judicature Act 1964 or its rules that entitled the applicant to make such an application before this court (see p 380G–H).

[Bahasa Malaysia summary

Perayu/pemohon telah membuat aduan kepada majistret meminta supaya 60 orang penentang (termasuk Menteri Kewangan dan Peguam Negara) didakwa. Majistret telah menolak aduan tersebut. Pemohon merayu dan juga memohon untuk satu perintah bagi 'suspension and interdict' terhadap penentang-penentang. Kedua-dua rayuan dan permohonan telah ditolak oleh Mahkamah Tinggi Shah Alam. Pada masa yang sama, hakim telah membuat satu perintah yang melarang pemohon daripada memulakan sebarang

prosiding guaman di mana-mana mahkamah melainkan dengan kebenaran seorang hakim. Pemohon kemudiannya memohon di Mahkamah Tinggi Seremban untuk kebenaran memfailkan aduan dengan seorang majistret. Mahkamah Tinggi di Seremban menolak permohonan pemohon. Pemohon merayu terhadap keputusan tersebut. Apabila tibanya masa untuk rayuan didengar di hadapan mahkamah ini, pemohon meminta supaya beliau didengar atas notis usulnya yang bertujuan mengetepikan perintah Mahkamah Tinggi Shah Alam. Menurut pemohon, perintah itu merupakan suatu 'perintah pembatalan' dan dengan itu, pemohon berpandangan bahawa beliau sama ada boleh mengabaikan perintah tersebut atau membuat permohonan kepada mahkamah supaya mengetepikannya.

Diputuskan, menolak permohonan:

Permohonan ini sepatutnya telah dibuat di Mahkamah Tinggi Shah Alam atau mana-mana Mahkamah Tinggi di Malaya. Afidavit yang menyokong usul pemohon tidak menunjukkan bahawa pemohon telah membuat permohonan sedemikian di mana-mana Mahkamah Tinggi tersebut. Tidak juga terdapat peruntukan dalam Akta Mahkamah Kehakiman 1964 atau kaedah-kaedahnya yang memberi hak kepada pemohon untuk membuat permohonan sedemikian di hadapan mahkamah ini (lihat ms 380G–H).]

Notes

For a case on jurisdiction of the Court of Appeal, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1507.

Cases referred to

Boaler, Re (1915) 83 LJKB 1629 (refd)
United Asian Bank Bhd v Elgi Marka Sdn Bhd [1995] 1 MLJ 301 (refd)

Legislation referred to

Courts of Judicature Act 1964
Criminal Procedure Code (FMS Cap 6) s 133
Penal Code (FMS Cap 45) ss 406, 418

Appeal from: Criminal Application No 44–7 of 1996 (High Court, Seremban)

The appellant appearing in person.
Kamaruzaman Abd Jalil (Deputy Public Prosecutor) for the respondent.

Ahmad Fairuz JCA (delivering the judgment of the court): The appellant/applicant, Hardial Singh Sekhon, had applied in the High Court at Seremban for leave to file a complaint with a magistrate regarding offences under ss 406 and 418 of the Penal Code (FMS Cap 45) allegedly committed by one Au Seak Chow. The application for leave was required

by the Shah Alam High Court order of 12 October 1990 which prohibited the applicant from instituting any legal proceedings in any court save by leave of a judge. After hearing the parties, the High Court at Seremban dismissed the applicant's application. The applicant appealed against the said decision. When the appeal came up for hearing before us, the applicant requested that he be heard on his notice of motion dated 14 September 1998. By this motion, the applicant sought to set aside the Shah Alam High Court order of 12 October 1990 and to fix a date for the hearing of the appeal.

Prior to the order of 12 October 1990, the applicant made a complaint to the Rawang magistrate under s 133 of the Criminal Procedure Code (FMS Cap 6). Through that complaint, the applicant asked for the 60 respondents (which included the Minister of Finance and the Attorney-General) to be prosecuted. The magistrate dismissed the complaint. The applicant appealed against that decision. That appeal was disposed of together with the applicant's application for an order for 'suspension and interdict' (sic) against the respondents (the Attorney-General by his personal name and MDC Sdn Bhd). Both the appeal and the application were dismissed by the Shah Alam High Court on 12 October 1990. It was at this juncture that the learned judge proceeded to act under item 17 of the schedule to the Courts of Judicature Act 1964 and made the order which the applicant now seeks to set aside. That order was, according to the applicant, a 'nullity order'. As such, the applicant was of the view that he could either ignore the order or go to court and get it set aside. For this view, the applicant referred us to the case of *United Asian Bank Bhd v Elgi Marka Sdn Bhd* [1995] 1 MLJ 301. What is clear from this case is that the application to set aside a High Court order, which also was a nullity order, was made to the High Court that issued the order.

The applicant also referred us to the case of *Re Boaler* (1914) 83 LJKB 1629 which according to him supports his right to have the order of 12 October 1990 set aside. The order sought to be set aside in *Re Boaler*'s case was an order made by a divisional court. The application to set aside that order was also made to the divisional court.

Bearing in mind these two aforementioned cases, we came to the view that this application should therefore have been made in the High Court at Shah Alam or any High Court in Malaya. The affidavit in support of the applicant's motion did not show that the applicant had made such applications in any of the aforementioned High Courts. We were also unable to find any provisions in the Courts of Judicature Act 1964 or its rules that entitle the applicant to make such application before us. As such, the applicant's notice of motion had to be dismissed.

As regards the appeal before us, the applicant requested for another date for the hearing of the appeal as he was under the wrong impression that the appeal had not been fixed for hearing yet. We accordingly directed that the appeal be taken off the hearing list.

Application dismissed.

Reported by David Lai